

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JON KNABEL, CLINTON COUNTY	ADMINISTRATIVE ORDER NO. 2008-AQ- 42 2008-SW- 33
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TO: Jon Knabel
P.O. Box 53
Calamus, Iowa 52729

Jon Knabel
92 2nd Street
Calamus, Iowa 52729

I. SUMMARY

This administrative order is entered into for the purpose of resolving solid waste and air quality violations which have occurred at a site located in Clinton County, Iowa.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:

Kurt Levetzow
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, Iowa 52352
Phone: 515/281-4801

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2), which authorizes the Director to issue any order necessary to secure compliance with

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or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Jon Knabel has open burned and open dumped on property located at 2414 158th Avenue, Calamus, Clinton County, Iowa (the site). The site is owned by Associated Painted Information Systems Management Team, Inc., and Jon Knabel is Iowa registered agent for that corporation.

2. On May 7, 2007, DNR Field Office No. 6 received a complaint concerning improper solid waste disposal at the site. The complainant stated that there was an illegal dumpsite on the north edge of the site.

3. DNR investigated on May 24, 2007. DNR personnel observed that just north of the residential dwelling on the site, along the timberline, a hole had been dug and illegal solid waste had been deposited in the hole (the north hole). The solid waste in the hole included household garbage, two bicycles, one television, one water heater, a mattress, a garden hose, carpet, plastic, and one couch, along with other miscellaneous solid waste materials. Evidence of open burning was not observed.

4. DNR contacted Jon Knabel by telephone, and Mr. Knabel stated that he was the executor of the site and the site was for sale.

5. DNR sent a May 30, 2007, to Mr. Knabel, explaining the prohibitions against open dumping and open burning. The May 30 letter required that by no later than July 27, 2007, Mr. Knabel should clean up the illegal solid waste dumpsite in the north hole and submit to DNR either recycling or sanitary landfill disposal receipts to confirm cleanup of the illegal solid waste disposal at the site. The letter also stated that a DNR follow-up investigation would occur.

6. On June 25, 2007, following receipt of a second complaint, DNR revisited the site. The materials in the north hole had not been burned. However, a hole also had been dug just south of the residential dwelling on the site, and solid waste had been illegally open burned in that hole (the south hole). The solid waste materials in the south hole included red plywood, shingles, a pallet, plastic sheeting, and other miscellaneous solid waste materials.

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7. DNR sent a June 29, 2007, letter to Mr. Knabel, again explaining the prohibitions against open dumping and open burning. The June 29 letter required that by no later than July 27, 2007, Mr. Knabel should clean up the illegal solid waste dumpsite in the south hole and submit to DNR either recycling or sanitary landfill disposal receipts to confirm cleanup of the illegal solid waste disposal at both the north hole and the south hole. The June 29 letter also stated that there is a specific prohibition against the open burning of shingles.

8. On August 9, 2007, DNR again inspected the site. During that visit, DNR personnel observed Mr. Knabel open burning the material in the south hole. DNR personnel asked Mr. Knabel if he had received the May and June 2007 letters explaining the prohibitions against open burning and open dumping. Mr. Knabel replied that he did not recall. Mr. Knabel also stated that he was not aware that open burning is illegal. DNR personnel informed Mr. Knabel that he should be aware of the open burning regulations, as he is a member of the local fire department.

9. Photographs were taken of the August 9 open burning incident. The south hole still contained the solid waste materials observed during the June 25 site visit. Other solid waste materials had been added to the south hole, including paper, cardboard, a wooden table and chair, and an unidentified electrical device.

10. On December 19, 2007, DNR field office personnel conducted a follow-up visit at the site, and observed that the north hole contained the following solid waste: a burn barrel containing miscellaneous material, a pressure tank or water heater, an old couch, an old bicycle, and a baseball helmet. Although there was snow in the hold, metal objects also were observed protruding through the snow. The south hole was covered with snow, so no observations were possible.

11. On January 31, 2008, DNR personnel once again visited the site, and observed that cleanup of the site still had not occurred.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trades wastes is specifically prohibited. The above facts demonstrate violations of this provision.

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3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Jon Knabel do the following:

1. By no later than April 1, 2008, clean up any solid waste materials at any location on the site and submit to DNR Field Office No. 6 recycling or sanitary landfill disposal receipts; and

2. Pay a penalty of \$2,000.00 (two thousand dollars) within 60 days of the date this order is signed by the director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$2,000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit – Jon Knabel has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$200.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Further, the open burning of shingles, as in this case, is specifically prohibited. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$600.00 is assessed for this factor.

Culpability – Jon Knabel has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$1,200.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements

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pertaining to the specific violations described in Section "IV. Conclusions of Law"
of this administrative order.



Richard A. Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
Oct., 2008.

Washington County Air Quality file; Anne Preziosi; Field Office No. 6; VII.C.1